

OGC HAS REVIEWED.

TAB

13 September 1955

MEMORANDUM FOR THE RECORD

SUBJECT: Disclosure of Medical Records and the Physician-Patient Privilege

1. There has been brought to my attention certain material thought to have a bearing on the conclusions embodied in my memorandum on this subject of 6 September 1955.

2. Public Health Reports, Vol. 61, No. 46, 15 November 1946, at page 1647, states: "(The Public Health Service recommends that:) . . . 15. The records in all health service programs be properly maintained on prescribed standard forms. Individual case records of medical, dental, and nursing services be retained in the health unit and be regarded as confidential material. Interpretive reports be available for official usage."

3. The quotation is from text entitled, "A Suggested Plan for a Preventive Medical Program in a Federal Employees' Health Service (emphasis supplied)." Reference is made to Public Law 658, 79th Congress, which requires the Public Health Service to make such recommendations.

4. The Act of 8 August 1946 (P.L. 658) authorizes "the heads of departments and agencies" to establish health services for employees "after consultation with the Public Health Service and consideration of its recommendations." There is no requirement that the agency head be bound by these recommendations. If he chooses to follow them, he does so voluntarily and not because he has any legal obligation to do so.

5. I would therefore conclude:

(a) The quoted "suggestion" has no force of law or regulation.

(b) In any case, it has no relation to the "physician-patient privilege" to which the law accords limited recognition.

(c) The adoption of this suggestion is at the discretion of each agency head, who does not of course, even by adopting

it, bind himself irrevocably; although it is sound to exclude the public generally from medical records, the agency head (or those designated by him) may have a perfectly legitimate need for access.

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Office of General Counsel

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